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Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/70 /2008& ST/461/06
ST/COD/25/08, ST/MISC/136/08
ST/STAY/262/08

Date 04/05/2009

Assistant Registrar
C.E.S.T.A.T., New Delhi

To :
M/S ENGINEERS INDIA LIMITED

ENGINEERS INDIA BHAWAN,1;BHIKAJI CAMA
PLACE,NEW DELH-110066.
M/S ENGINEERS INDIA LIMITED

Appellant

Vs

C.S.T. DELHI

Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/139-140 2009 CU[DB]** dated 26.03.09

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax
alongwith Stay order No - ST/145/09 & misc order No ST/M/37/09

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.S.T. DELHI
   17-B, I.P. ESTATE, IAEA HOUSE, NEW DELHI.
2. Adv. / Consult
   MR.P.K.SAHU
   A-345(F F) DEFENCE COLONY,N.DELHI
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax COD Application No. 25 of 2008
Service Tax Misc. Application No. 136 of 2008
Service Tax Stay Application No. 262 of 2008
Service Tax Appeal No. 70 of 2008
& Service Tax Appeal No. 461 of 2006

[Arising out of Order-in-Original Nos. 03/RK/2006 dated 25.1.2006 and 27/RK/2006 dated 14.6.2006 both passed by Commissioner of Service Tax, New Delhi]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : NO

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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M/s. Engineers India Ltd. — Appellant

Vs.

Commissioner of Service Tax
New Delhi — Respondent

Appearance: Mr. Prashant Shukla, Advocate for the Appellant
Mr. Sunil Kumar, SDR for the Respondent

CORAM: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 26.3.2009

Final **ORAL ORDER NO.** ST/139-140/09

Stay Order no ST/140/09 / Misc Order no ST/37/09

Per M. Veeraiyan (for the Bench):

Heard both sides extensively on the appeal ST/70/2008 and the Misc. application and application for condonation of delay connected to this appeal as well as on the appeal No. ST/461/2006. These appeals and applications are closely interrelated and therefore, are being dealt with by a common order.

2. The appellant was issued with a show cause notice dated 19.10.05 proposing a demand of service tax amounting to Rs.81,21,906/- on the ground that the rate of service tax applied during the period April, 2004 to September, 2004 was lower than the correct rate of service tax applicable. The show cause notice was issued based on returns submitted by the appellant along with statement relating to realisation of service charges for the said period. On the basis of reply, Commissioner came to a conclusion that on merits, the submissions of the appellants were acceptable but confirmed the demand of Rs.5,97,389/- by his order dated 25.1.06. The assessee did not immediately file appeal against the order dated 25.1.06 but filed an application for rectification of mistake before the Commissioner claiming that for the month of July, 2004, a part of the amount realised should have been taxed only at 5% and only the balance should have been taxed at 8%. The Commissioner vide his subsequent order dated 14.6.06 rejected the application for rectification. Against the said order, the assessee

filed the Appeal No. ST/461/2006 and also filed a stay petition. The stay petition was rejected by the Tribunal on the ground that there was no demand of service tax in the order dated 14.6.2006 disposing the rectification application. Thereupon, the assessee has filed the appeal against the first order dated 25.1.2006 along with application for condonation of delay. The assessee has also filed an application for modification of order on stay application filed in connection with Appeal No. ST/461/2006 seeking stay of the recovery of dues as per the impugned orders.

3. After hearing the Misc. applications for a while, we condone the delay in filing the appeal No. ST/70/2008. We also waive the requirement of pre-deposit of dues as per the impugned order dated 25.1.2006 and proceed to dispose of the appeals.

4. According to the assessee, they received a sum of Rs.20,46,13,925/- during the month of July, 2004 which relates to services rendered by them for the period from August, 2000 to July, 2004; that the rate of service tax was only 5% in respect of services rendered upto 13.5.03 and only for the rest of the period the rate of tax is 8%. This claim has been accepted on principle by the Commissioner in his order dated 25.1.2006. Ther~~e~~ dispute is ~~relating to the fact that~~ as to whether certain sum on which 8% of rate of tax has been applied relates to services rendered prior to that date, i.e. 13.5.03. The learned advocate submits that in the statement filed along with the returns for the half-year-ending September, 2004, they have clearly indicated the break up of figures which attract 5% tax and 8% tax separately.

It is clearly a mistake on the part of the Commissioner in applying the wrong rates possibly due to communication gap. He submits that they will be able to furnish the evidence before the Commissioner to prove that the demand of differential tax confirmed is not sustainable as the said value of services were relating to period prior to 13.5.2003. We feel that this request should be accepted and the matter should be considered by the Commissioner afresh. To enable the same, we set aside the orders of Commissioner dated 25.1.2006 and 14.6.2006 and remand the matter for fresh consideration after granting reasonable opportunity of hearing in the light of our observations made above.

5. The Misc. application and application for COD are also disposed.

(Dictated and Pronounced in the open Court)

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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